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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,096	07/31/2001	Kevin P. Headings	108.0009-00000	6782
22882	7590	12/15/2005		
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER VAN HANDEL, MICHAEL P	
			ART UNIT 2617	PAPER NUMBER

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/921,096	Applicant(s) HEADINGS ET AL.	
	Examiner Michael Van Handel	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1-4, 6-11, 13-18, 20-25, 27-33, 35, 37-39** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1, 8, 15, 22, and 29**, Payton discloses a system/method for distributing digital video content, the system comprising:

- a sending processor 24 operable to deliver video content over a network to at least one storage location (col. 5, l. 55-57)(Fig. 2); and
- a receiving processor 28 at each storage location operable to receive the video content from said sending processor and refresh a content database 56 (local storage) based on the video content received (col. 6, l. 1-7), said content database adapted to provide a group of consumers access to the video content stored therein for a selected interval of time (Payton discloses a list that determines which items will be added to or deleted from the local storage and that the list of recommended items is updated periodically)(col. 7, l. 61-67)(col. 8, l. 1-10).

Referring to claims **2, 9, and 16**, Payton discloses the system of claims **1, 8, and 15**, respectively, wherein said receiving processor is operable to refresh said content database based on criteria associated with the consumers (col. 8, l. 50-67)(col. 9, l. 1-13)(Figs. 6, 7a, 7b).

Referring to claims **3, 4, 10, 11, 17, 18, 23-25, 32-33, and 37**, Payton discloses the systems of claims **2, 3, 9, 10, 16, 22, 23, and 29**, respectively, wherein the criteria associated with the consumers includes the content usage by the consumers, and wherein the content usage includes the viewing and listening habits of each consumer (col. 4, l. 57-58)(col. 8, l. 38-49).

Referring to claims **6, 7, 13, 14, 20, 21, 27, and 28**, Payton discloses the systems of claims **1, 6, 9, 13, 15, 20, 22, and 27**, respectively, wherein said receiving processor is operable to refresh said content database based on one or more contractual obligations associated with the content, and wherein one of the contractual obligations includes a price charged for media content access (col. 7, l. 65-67)(col. 8, l. 1-5).

Referring to claim **30**, Payton discloses the system of claim **29**, wherein said receiving processor is programmed to offer each consumer an extension of time before purging the media content (the examiner notes that items are added and deleted from storage according to a level of priority that is determined by user interaction with the item. Therefore, by interacting with a particular item more often, the period of time that the item is stored is extended.)(col. 8, l. 26-37).

Referring to claims **31 and 35**, Payton discloses the system of claim **29**, wherein said receiving processor is programmed for secured access to media content and to decrypt media content that is encrypted (col. 4, l. 64-66).

Referring to claim **38**, Payton discloses the system of claim 29, wherein the media content includes media content selected by one of the consumers (col. 6, l. 7-11).

Referring to claim **39**, Payton discloses the system of claim 29, wherein said receiving processor and database are located proximate a visual display accessible by one of the consumers (col. 6, l. 20-23).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **5, 12, 19, 26, 34** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton in view of Eldering et al.

Referring to claims **5, 12, 19, 26, and 34**, Payton discloses the systems of claims 3, 10, 15, 23, and 29, respectively. Payton does not disclose that the content usage includes an amount of time each consumer views the content. Eldering et al. discloses a system for characterizing subscribers, wherein the time duration of a user's viewing is monitored. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to include monitoring a user's viewing time such as that taught by Eldering et al. in order to better provide subscribers with programming and advertising which will be of interest to them (col. 1, l. 64-66).

5. Claim **36** is rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claim **36**, Payton discloses the system of claim 29. Payton further discloses a CD ROM writer 65, which writes a digital audio signal onto a blank CD ROM, which can then be played on a separate audio system. Payton does not disclose preventing unauthorized copying of the media content. The examiner takes Official Notice that preventing the copying of media data is well known within the prior art. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to prevent copying of media data such as that taught by the prior art in order to ensure that media providers are properly compensated for distributing media.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571.272.7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Art Unit: 2617

Michael Van Handel

Examiner

Art Unit 2617

MVH


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
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